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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,931	08/22/2003	Rejean Roy	247-1US	8272
5568	7590	11/15/2005	EXAMINER	
JACK PAAVILA BOX 1151 ALEXANDRIA, KOC IA0 CANADA			NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/645,931	ROY, REJEAN
	<b>Examiner</b>	<b>Art Unit</b>
	Son T. Nguyen	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 23 August 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 3,4,7-9,16 and 18-32 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 3,4,7-9,16,18 and 21-32 is/are rejected.

7)  Claim(s) 19 and 20 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 22 August 2003 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 3,4,7,16,18,23-29,31** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawamoto (JP408266175A) in view of Strebello (WO95/26623).

For claim 23, Kawamoto teaches a hydroponic growing unit comprising a base 33,34 having a vertical base wall 33; a vertical plant support wall 14 mounted on the base wall, the remainder of the support wall stationary on the base; and spaced-apart, mounting means 13a,19,20, on the inner surface of the support wall. However, Kawamoto is silent about at least one opening in the support wall and at least one wall panel movable to close or open the opening, and the mounting means on the wall panel.

Strebello teaches a hydroponic growing unit having a base 41, the outer periphery of the base defined by an outer, vertical base wall (see fig. 2) the base shaped to hold liquid; a vertical plant support wall 2, forming a generally annular enclosure, the support wall mounted on the base wall to extend above the base, the support wall having a plurality of mounting means (see figs. 2-3) on its inner surface, and to enclose space above the base; and a least one opening (figs. 1-2, one those panels 2 opens up for access therein at ref. 7) in the support wall providing access to the enclosed space and to the inner surface of the support wall, the opening normally closed by at least one wall panel forming part of the support wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a

movable wall panel such as a door as taught by Strebello on the unit of Kawamoto in order to allow access to the interior of the unit by closing or opening the wall panel. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the mounting means on the movable wall panel of the unit of Kawamoto as modified by Strebello in order to maximize planting space usage so that more plants can be grown in the unit due to utilization of the wall panel in addition to the support wall.

For claims 3 & 25, Kawamoto as modified by Strebello (emphasis on Kawamoto) further teaches the base is in the shape of an annular trough with inner and outer vertical side walls 33 and a bottom wall 34 joining the side walls.

For claims 4 & 26, in addition to the above, Strebello teaches wherein the trough has a well formed therein, the well is sized to receive a pump (see figs. 1-2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a well as further taught by Strebello in the base of Kawamoto as modified by Strebello in order to allow a user to put a pump therein.

For claims 16 & 18, in addition to the above, Strebello teaches a watering inlet 82 associated with each mounting means, the inlets supported by the top of the support wall and connected via tubing 81 and a pump (page 10, lines 30-35) to the liquid in the base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a watering inlet associated with each mounting means, the inlets supported by the top of the support wall and connected via tubing and a pump as further taught by Strebello in the unit of Kawamoto as modified by Strebello in order to provide irrigation to each plant in the unit.

For claim 24, Kawamoto as modified by Strebello is silent about all the mounting means are located near the top of the support wall and arranged in a circle about the support wall. It would have been obvious to one having ordinary skill in the art at the time the invention was

made to have the mounting means of Kawamoto as modified by Strebelow only near the top of the support wall, depending on the user's utilization of the space available in the unit and the desire number of plants he/she wishes to grow. If the user only wants to grow one row of plants, then only the top area mounting means is utilized.

For claims 27 & 28, Kawamoto as modified by Strebelow (emphasis on Kawamoto) further teaches lighting means 42,43 mounted on the unit in the axial center.

For claims 7,29 & 31, Kawamoto as modified by Strebelow (emphasis on Kawamoto) further teaches a light tube 43 open at the top but not at the bottom. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the bottom of the tube of Kawamoto as modified by Strebelow be opened, since it is notoriously well known that light tube made for light can have both ends open or one end open depending on the user's choice to pick which one to use.

3. **Claim 9** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kawamoto as modified by Strebelow as applied to claims 7,23,27 above, and further in view of DeMarco (4850135).

Kawamoto as modified by Strebelow (emphasis on Kawamoto) further teaches the light source 42,43 is connected to something on the top of the unit but does not specify that this "something" is a top light support mounted on the top of the support wall. DeMarco teaches a plant unit comprising a top light support 60 mounted on the top of the support wall and supporting the top end of a light source 56 centrally within the support wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a top light support as taught by DeMarco in the system of Kawamoto as modified by Strebelow in order to further secure the light in the central area of the unit.

4. **Claims 8,30,32** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawamoto as modified by Strebello as applied to claims 7,23,27 above, and further in view of Ishimoto (US 5228235).

Kawamoto as modified by Strebello is silent about a ventilating fan. Ishimoto teaches a hydroponic unit comprising a fan 12 on top of the light source for ventilating the light source 14,141 inside the unit. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a fan as taught by Ishimoto in the unit of Kawamoto as modified by Strebello in order to ventilate the unit from the heat produce by the light source. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the fan of Kawamoto as modified by Strebello and Ishimoto at the bottom of the tube, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

5. **Claims 21,22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawamoto as modified by Strebello as applied to claims 7,23,27 above, and further in view of Martin (US 3458951).

Kawamoto as modified by Strebello is silent about the support wall has two diametrically opposed openings therein, each opening closed by two end wall panels, each end wall panel hinged to the support wall, the end wall panels forming part of the support wall when closed.

Martin teaches a hydroponic unit wherein the support wall has two diametrically opposed openings (doors 158,160) therein, each opening closed by two end wall panels, each end wall panel hinged to the support wall, the end wall panels forming part of the support wall when closed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the support wall has two diametrically opposed openings (doors

158,160) therein, each opening closed by two end wall panels, each end wall panel hinged to the support wall, the end wall panels forming part of the support wall when closed as taught by Martin in the unit of Kawamoto as modified by Strebello in order to provide a larger access area into the interior of the unit.

***Allowable Subject Matter***

6. **Claims 19 & 20** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments with respect to claims 3,4,7-9,16,18,21,22 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen

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Primary Examiner  
Art Unit 3643

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